



ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

ORIGINAL

EX PARTE OR LATE FILED

March 24, 2000

Jonathan Askin  
General Counsel

Magalie R. Salas, Secretary  
Federal Communications Commission  
The Portals  
445 – 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

RECEIVED

MAR 24 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: **Written *Ex Parte* Statement of the  
Association for Local Telecommunications Services**  
Implementation of the Local Competition Provisions of the  
Telecommunications Act of 1996, CC Docket No. 96-98

Dear Ms. Salas:

Pursuant to § 1.1206(b)(1) of the Commission's Rules, the Association for Local Telecommunication Services ("ALTS") submits this written *ex parte* presentation related to the above-captioned docketed proceeding.

## **I. INTRODUCTION AND BACKGROUND**

As the leading national trade association representing the competitive local exchange carrier industry, ALTS submits this *ex parte* statement to present its position on rules and policies that should govern the combinations of unbundled network elements ("UNEs") known in the industry as Enhanced Extended Links or "EELs". EELs are combinations of transport and aggregation UNEs – typically local loops, end office multiplexing, and interoffice transport – which are critical to the development of facilities-based competition for local services. ALTS described the CLEC community's need for EELs extensively in its comments and *ex partes* throughout the Docket 96-98 proceeding, and the Commission responded.

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In the Third Report and Order, the Commission found that ILECs are required to make EELs available to CLECs and other requesting telecommunications carriers under § 251(c) of the Communications Act and under Part 315(b) of the Commission's rules.<sup>1</sup> The Commission imposed no restrictions on the availability of EELs, except that some sections of the Order have been interpreted by some parties to suggest that CLECs must be collocated at some ILEC office or other point on the ILEC network, in order to obtain EELs.<sup>2</sup> ALTS understands that the Commission felt compelled to impose this restriction in order to prevent access charge arbitrage by preventing carriers from using the EEL as a means to avoid access charges. This policy allowed the Commission to continue to rely on a market-based approach to access charge reform. Specifically, parties argued that, if EELs were available without restriction, the largest interexchange carriers in the country would immediately take the Special Access circuits they currently purchase from ILECs for the transport and termination of their interexchange voice traffic, and convert them to EELs priced at TELRIC, thereby circumventing the current access regime without allowing the market to adjust to such a dramatic regulatory change.<sup>3</sup>

It is ALTS' understanding that, following release of the Third Report and Order, a number of ILECs expressed concern that the collocation requirement included in the Order was inadequate to protect the ILECs from a dramatic and immediate loss of Special

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<sup>1</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC99-238 (rel. Nov. 5, 1999) *modified by* Supplemental Order, FCC 99-370 (rel. Nov. 24, 1999).

<sup>2</sup> *See id.*, Third Report and Order at ¶ 486; Supplemental Order at ¶ 3.

<sup>3</sup> *See* Supplemental Order at ¶ 4. ALTS believes avoiding instantaneous market shock is a laudable goal, as is the need for clarity in the special access to EEL

Access revenues. The ILECs further stated that the largest IXC could quickly establish collocation arrangements, and obtain “entrance facilities” to their points of presence from competitive transport providers, or that such arrangements were already in place. This development purportedly would allow the IXC to convert the Special Access services used for transport of interexchange voice traffic to EELs, thereby effecting a substantial reduction in ILEC Special Access revenues.<sup>4</sup>

In response to these stated concerns, the Commission issued its Supplemental Order, which adopted use restrictions for EELs. Specifically, the Commission found that ILECs would be required to provide EELs only if the requesting carrier self-certified that the EEL would be used to transport and terminate a “significant amount of local traffic.”<sup>5</sup> It is ALTS’ understanding that this use restriction was adopted to ensure that requesting carriers could not use EELs solely for the transport and termination of interexchange switched voice traffic. In other words, the use restriction would protect against access arbitrage but would still allow CLECs to use the service to expand their presence in local markets without having to establish an unreasonable and uneconomic number of collocations in the ILEC exchanges.

Following the issue of the Third Report and Order and Supplemental Order, a number of parties – including ALTS – sought guidance from the Commission on how its EEL rules would be implemented. This process has led to substantial debate within the

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conversion process so that CLECs can develop and carry out certain and viable business plans.

<sup>4</sup> Supplemental Order at ¶ 4.

<sup>5</sup> Supplemental Order at ¶ 5.

industry concerning how EELs will be provisioned, and how the Commission's "significant amount of local traffic" test will be defined.

On February 28, 2000, a group consisting of five Tier 1 ILECs and four CLECs (all four of which are ALTS member companies) submitted a letter to the Commission proposing a series of regulations that would clarify the use restriction included in the Supplemental Order. This ILEC/CLEC Letter proposed the following three circumstances under which a requesting carrier should be able to obtain an EEL:

Option 1:

If a carrier is collocated in an ILEC office and provides 100% of an end user's local exchange service.

Option 2:

If one-third of the lines that a carrier provides to an end user carry local traffic; and

If the lines carry DS1 capacity or higher, at least 50% of activated channels individually carry at least 5% local voice traffic, and all of the channels combined carry at least 10% local voice traffic (this obligation applies to all channels, even if they are multiplexed into high speed facilities); and

The carrier is collocated in an ILEC office.

Option 3:

A carrier does not have to be collocated if:

50% of the traffic on each of these lines originates and terminates within the ILEC-defined local calling area (this obligation applies to all channels, even if they are multiplexed into higher speed facilities); and

the entire loop, regardless of the amount of individual channels it contains, carries 33% local voice traffic.

It is ALTs' understanding that the CLEC parties believed that further clarification as to when a carrier may purchase the EEL was necessary in order to avoid uncertainty

and delay in provisioning EELs. The three options are an attempt by these carriers to clarify what is considered “significantly local.” The third option also provides an exception to the perceived requirement that a carrier be collocated in order to purchase EELs. ALTS understands that this provision was included to address the network architecture designs of certain wireline and wireless local service providers. Under all three options, ILEC-provided services may not be connected to EELs. The ILEC/CLEC proposal also contains provisions allowing ILECs to conduct audits of CLEC compliance with these use restrictions on 30 days’ notice.

On March 13, 2000, another group of CLECs, some interexchange carriers, and CompTel, filed a letter expressing their opposition to the ILEC/CLEC proposal. This letter expressed the view that the restrictions contained in the ILEC/CLEC proposal would harm the development of competition, especially for data and internet services. The letter also alleged that the collocation requirement would increase competitors’ costs and encourage wasteful use of collocation space. The letter also expressed concern that the audit process would leave competitors vulnerable to the “caprice” of the ILECs.

In this document, ALTS endeavors to provide a consensus approach toward EEL provisioning that recognizes the needs of the four CLECs that joined in the ILEC/CLEC proposal and the competitors on the CompTel letter and that recognizes the need to prevent access charge arbitrage. As demonstrated in the letter signed by several CLECs, IXC and CompTel, the restrictions in the ILEC/CLEC proposal are too restrictive for some competitors. On the other hand, allowing unrestricted provisioning of EELs could lead to excessive amounts of access charge arbitrage and could undermine the efforts of those CLECs who provide full, facilities-based competition for special access circuits.

ALTS believes that the availability of EELs is critically important to the development of competition. In particular, EELs have gained even more importance to the competitive local carrier industry in light of the recent decision by the U.S. Court of Appeals for the District of Columbia Circuit.<sup>6</sup> In that decision, the court vacated many of the Commission's collocation rules, and remanded them to the Commission for further justification. While ALTS anticipates that the Commission will be successful in re-enacting its collocation rules, such action may take a substantial amount of time, during which the availability of fully functional collocation arrangements may be restricted. If such an outcome were to result from the court's decision, it is imperative that CLECs have EELs readily available as an alternative to collocation.

ALTS is eager to resolve the issue of EEL provisioning as quickly as possible to speed the delivery of these circuits and to avoid unnecessary litigation and confusion. It is necessary to adopt some form of restrictions on the provisioning of EELs in order to remove uncertainty in the marketplace and allow EELs to be provided as quickly as possible. Below, ALTS provides an approach that attempts to integrate the views of all the proponents as well as the concerns about access charge arbitrage. This proposal includes reasonable interim restrictions and procedures that will prevent access arbitrage while providing CLECs with UNE transport functions that will allow them to expand their networks efficiently, and to provide a variety of service options to end users.

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<sup>6</sup> *GTE Service Corporation v. FCC*, No. 99-1176, slip op. (D.C. Cir., Mar. 17, 2000).

## **II. THE ALTS PROPOSAL**

In the past, ALTS has opposed the imposition of use restrictions on UNEs and UNE combinations. Nevertheless, ALTS respects the Commission's apparent desire to preserve the distinction between UNE rules and exchange access.<sup>7</sup> As a result, ALTS is pleased to provide the following proposed rules governing restrictions on EELs. ALTS emphasizes that these rules should be adopted only for a reasonable transition period and that they are designed to ensure that the EEL is not used to circumvent the current access regime, not to complicate or limit the use of EELs to provide local service. Any rules should be designed in such a manner to allow rates to decrease gradually as they would in a market environment, not to produce a flash cut rate reduction resulting from regulatory decision. As such, ALTS contends that these recommended use restrictions be phased out after two years.

### **A. ANY USE RESTRICTIONS MUST BE NARROWLY TAILORED TO A LIMITED PURPOSE – PROTECTING EXISTING LEVELS OF ILEC REVENUES DERIVED FROM TRANSPORT OF SWITCHED VOICE TRAFFIC**

The imposition of use restrictions must be narrowly tailored to solve a specific problem. As discussed above, ALTS understands that the specific problem for which the Commission seeks a solution is the prevention of access arbitrage. In taking any action

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<sup>7</sup> ALTS and the CLEC community have often argued for regulatory and business certainty and regulatory decisions that do not cause immediate rate shock or dramatically affect CLEC business plans. CLECs develop business plans based on regulatory certainty and flash cut changes without a transition that mimics market activity could dramatically and detrimentally affect the emerging competitive marketplace.

that clarifies use restrictions that will limit a CLEC's ability to convert Special Access circuits to EELs, the Commission should unambiguously state the policy and business goals that such restrictions are intended to achieve. This will ensure that the Commission and interested parties can determine if the restrictions are effective in serving their stated purpose, and will ensure that the restrictions are the least restrictive means of effecting the Commission's policies.

In keeping with the above discussion, the Commission should clarify that the use restrictions are being imposed to prevent the use of EELs as a means to avoid traditional access arrangements. It is imperative that the use restriction not serve as a general vehicle for protecting ILEC revenues derived from other services, such as packet switched services in general and data traffic in particular. To establish such a broad restriction on the use of unbundled network elements would profoundly inhibit the use of UNEs by competitors for advanced services, and could not be reconciled with the mandates of Sections 251, 252, 271 and 706 of the Communications Act.

**B. USE RESTRICTIONS MUST NOT INTERFERE WITH A CLEC'S ABILITY TO PROVIDE DATA OR INTERNET ACCESS SERVICES**

In the Advanced Services Proceeding and the UNE Remand Proceeding, among many others, the Commission has recognized that packet-based services are becoming increasingly important to the industry and end users, and that the innovative and high-bandwidth applications of the future will involve data transmissions. For this reason, it is critical to ensure that the use restrictions designed to protect the current access regime may not be used to restrict a CLEC's ability to provide data services over EELs.



Some observers suggest that EELs should be restricted to carrying certain percentages of local voice traffic. Yet a requirement that every EEL must carry a certain percentage of local voice traffic could make it difficult for many CLECs to serve end users efficiently. For instance, the ILEC/CLEC proposal Options 2 and 3 require that “the entire loop facility” segment of the EEL must have at least 10% and 33% local voice traffic, respectively. Other CLECs are concerned about how this percentage of traffic would be measured. If the local voice traffic is measured as a percentage of capacity on the loop, a typical CLEC providing full service to an end user will find it impossible to meet these requirements. Assume a CLEC obtains an EEL consisting of a DS1 loop and DS1 transport, and uses it to provide service to a small business. Assume the small business orders two voice lines for POTS and a T-1 Internet access connection. At any given time, the voice POTS lines will use 56 or 64 kbps of bandwidth apiece, while the Internet access connection will use 1.544 Mbps. Even if the phone lines were in constant use, they will never use 10% of the bandwidth available on the loop. Under the ILEC/CLEC proposal, CLECs could be prohibited from using EELs to provision this service, which would deny one of the most commonly requested CLEC service offerings to small business users. ILECs, by contrast, would continue to have access to the same facilities with no restrictions whatsoever.

In order to prevent EEL restrictions from having this unintended effect, ALTS proposes the following changes to the ILEC/CLEC proposals:

Option 1:

The telecommunications carrier is the exclusive provider of an end user's voice and/or data local exchange service and the loop/transport combination originates at a customer's premises and terminates at the telecommunications carrier's collocation arrangement; and

this option does not allow loop/transport combinations to be connected to ILEC services.

Nothing in this Option prevents a carrier from using loop/transport combinations to provide non-voice local services (i.e., LAN interconnection, data channels for point-of-sale credit verification, Internet access).

- or -

Option 2:

The telecommunications carrier provides local exchange and exchange access service to the end user customer and handles at least one third of the end use customer's local traffic measured as a percentage of total end user customer lines; and

for DS1 level and above, at least 50% of the activated channels on the loop portion of the loop and transport combination have at least 5% of the capacity of the channel purchased by the customer for local voice and/or data traffic individually;<sup>8</sup> and

~~the entire loop facility has at least 10% local voice traffic; and~~

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<sup>8</sup> It is important to define use restrictions in terms of what is purchased by the customer because, depending on the technology used by the ILEC or CLEC, the capacity purchased by the customer may be significantly less than the total capacity available on the loop. For example, local loops provisioned over ADSL equipment may be able to generate 2Mbps – or significantly more capacity – over a local loop, but an end user may only purchase service with much lower capacity, such as a residential ADSL service with a maximum downstream capacity of 384 kbps. Clearly, the amount of capacity purchased by the customer – not the capacity that the loop is technically capable of carrying – should form the basis of local usage measurement. Similarly, the amount of capacity made available for a customer's local voice or data traffic must be the measure of local usage. For example, if a customer purchases ADSL service that combines Internet access and a voice line, at any given time the customer has 64 kbps of capacity available for voice service. If the line is used for a local call and accessing an interstate Internet website at the same time, the customer will purchase a total of 384 kbps of bandwidth, of which 320 kbps will be used for interstate Internet access and 64 kbps will be dedicated to the local call. The local usage of the line will therefore be 64 kbps out of 384 kbps, or 17%.

if a loop/transport combination includes multiplexing, each of the multiplexed facilities must meet the above criteria for this option. For example, if DS1 loops are multiplexed onto DS3 transport, each of the individual DS1 facilities must meet the criteria for this option in order for the DS1/DS3 loop/transport combination to qualify for UNE treatment; and

the loop/transport combination originates at a customer's premises and terminates at the telecommunications carrier's collocation arrangement; and

this option does not allow loop/transport combinations to be connected to ILEC services.

Nothing in this Option prevents a carrier from using loop/transport combinations to provide non-voice local services (i.e., LAN interconnection, data channels for point-of-sale credit verification, Internet access).

- or -

Option 3:

A carrier does not have to be collocated if:

50% of the traffic on each of these lines originates or terminates within the ILEC-defined local calling area (this obligation applies to all channels, even if they are multiplexed into higher speed facilities); and

the entire loop, regardless of the amount of individual channels it contains, carries 33% local voice and/or data traffic.

- or -

Option 4:

A requesting carrier may petition the Commission for a waiver of these rules on a case-by-case basis.

With these changes, ILECs are assured that CLECs or other carriers cannot use EELs to transport only interexchange voice traffic, without providing local voice service to the end user customer. At the same time, data-oriented CLECs are assured that they will not be prevented from using EELs to provide service to customers that have

exclusively data applications, such as credit verification, alarm monitoring, computer-to-computer networking, connections to automated teller machines, etc.

**C. ANY AUDITING RULES MUST BE REASONABLE AND PROTECT CLECs AGAINST HARASSMENT**

ALTS agrees that carefully structured auditing mechanisms to ensure compliance with the EEL use restrictions are not unreasonable. The provisions of the ILEC/CLEC letter are a good start, but ALTS requests additional guidelines to ensure that CLECs are protected from excessive or harassing auditing. Specifically, ALTS asks the Commission to adopt the following three-part auditing process:

1. Any CLEC may volunteer to undergo an audit to resolve disputes, or to establish compliance with the use restrictions at the time conversion from Special Access to EELs is requested.
2. The largest IXCs – defined as those serving 5% or more of all access lines – are automatically subject to audit to ensure against precipitous reductions in ILEC Special Access revenues.
3. For other carriers:
  - The ILEC must obtain approval from the Commission to conduct an audit. Such approval will be granted expeditiously (within 30 calendar days) upon a showing by the ILEC of reasonable suspicion that the EEL use restriction rules are being violated.
  - Small and startup CLECs may seek waiver of the auditing requirement from the Commission. Such waiver will be granted upon a showing that

the auditing process would impose unreasonable cost or operational burdens on the CLEC.

**D. THE COMMISSION MUST CLARIFY PROCEDURES FOR ORDERING AND PROVISIONING EELS**

ALTS urges the Commission to establish clear and simple procedures for ordering and provisioning EELs in order to avoid unnecessary litigation, and the cost and delay such litigation would impose on the industry. First, the process by which CLECs certify that they comply with the use restrictions should be straightforward and uniform. To this end, ALTS appends to this Statement a proposed model certification letter.<sup>9</sup> ALTS requests that the Commission declare that any carrier submitting a document that follows this format will meet the Commission's certification requirement.

Second, the Commission should further elaborate on the process by which conversions from Special Access circuits to EELs will be accomplished. The Commission has already found that such conversions should be simple, and accomplished without delay.<sup>10</sup> The Commission should make the following additional clarifications:

- Conversion should entail a simple billing name change only; this should be accomplished through the use of a single Access Service Request, similar to the process adopted by industry consensus in New York.
- Conversion should not entail a hot cutover. The Special Access circuit should not be disconnected in order to accomplish conversion.

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<sup>9</sup> See Attachment A.

<sup>10</sup> Third Report and Order at ¶ 298, n. 581.

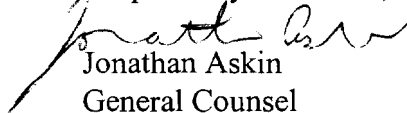
- Because no disconnect of the existing Special Access circuit is necessary, ILECs may not impose nonrecurring charges for the disconnect of an existing circuit and the installation of a new circuit. Rather, the only nonrecurring charge that may apply is a charge for a billing name change. Such charge may not exceed the charges listed in ILEC tariffs for billing name changes.
- Conversion from Special Access circuits to EELs must be completed within 30 days (one billing cycle) following receipt of a request for conversion. If such conversion is not made in a timely manner, CLECs will receive a billing credit for the amount of charges that exceed the UNE rates.
- All conversion requests received by ILECs on or after February 17 (the effective date of the UNE Remand Order) are subject to the above provisioning and billing credit requirements.
- Upon conversion of a Special Access circuit to an EEL, the ILEC may modify – but may not eliminate – the circuit ID record information associated with the original Special Access circuit.
- Following conversion of a Special Access circuit to an EEL, the ILEC must provision all necessary repair and maintenance functions within the intervals established for the original Special Access Service – if longer provisioning intervals are associated with individual UNE elements, they will not apply.
- “Rocket Docket” enforcement processes will be employed to ensure compliance with these requirements.

### III. Summary and Conclusion

For the reasons discussed above, ALTS proposes the foregoing use restrictions on EELs for the limited purpose of avoiding access arbitrage and ensuring that EELs are used to allow local service providers an efficient and timely manner to expand their service offerings. As long as these use restrictions continue in effect, CLECs will continue to have inferior access to ILEC networks and will continue to be at a competitive disadvantage in this regard. Accordingly, ALTS reiterates that such use restrictions should be eliminated after two years.

Pursuant to 1.1206(b)(1), ALTS submits an original and one (1) copy of this written *ex parte* notification for inclusion in the public record of each above-referenced proceedings. Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,



Jonathan Askin  
General Counsel  
Association for Local  
Telecommunications Services

cc: Chairman William E. Kennard  
Commissioner Susan Ness  
Commissioner Harold Furchtgott-Roth  
Commissioner Michael K. Powell  
Commissioner Gloria Tristani  
Kathy Brown  
Dorothy Attwood  
Rebecca Beynon  
Jordan Goldstein  
Sarah Whitesell  
Kyle Dixon  
Christopher Wright  
Lawrence Strickling  
Robert Atkinson  
Michele Carey

Jane Jackson  
Jake Jennings  
Jodie Donovan-May  
Christopher Libertelli  
International Transcription Service



ATTACHMENT A

[DATE]

[ILEC]

Re: Notice of Self-Certification

Dear [ILEC],

This is to notify [ILEC] that [CLEC] has self-certified that the special access circuits that [CLEC] has requested be converted to combinations of loops and transport (referred to as the enhanced extended links or EELs) are used to provide a significant amount of local exchange service, in addition to exchange access service, to the particular customers served by those facilities.

The Federal Communications Commission ("FCC"), in its UNE Remand Order, *In The Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Forth Notice of Proposed Rulemaking, FCC 99-238 (rel. Nov. 5, 1999), as modified by the UNE Remand Supplemental Order, *In The Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order, FCC 99-370 (rel. Nov. 24, 1999), ordered incumbent LECs to permit telecommunications carriers to convert special access services to combinations of unbundled loops and transport elements, with one constraint. In the UNE Supplemental Remand Order, the FCC characterized the constraint as follows: "until resolution of [the FCC's] Fourth FNPRM ... interexchange carriers (IXCs) may not convert special access services to combinations of unbundled loops and transport network elements, whether or not the IXCs self-provide entrance facilities (or obtain them from third parties)." UNE Supplemental Remand Order at ¶2,4.

However, the FCC also limited the constraint, concluding that "[t]his constraint does not apply if an IXC uses combinations of unbundled network elements to provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer." UNE Supplemental Remand Order at ¶2,5. In addition, the FCC stated that the constraint does not:

affect the ability of competitive LECs to use combinations of loops and transport (referred to as the enhanced extended link) to provide local exchange service. It also does not affect the ability of competitive LECs that are collocated and have self-provided transport (or obtained it from third parties), but are purchasing unbundled loops, to provide exchange access service. As we stated in paragraph 48 of the *Third Report and Order and Fourth FNPRM*, such a competitive carrier is entitled to purchase unbundled loops in order to provide advanced services (*e.g.*,

interstate special access xDSL service). [footnote omitted] Finally, the constraint will have no effect on competitive LECs using long distance switches to provide local exchange service.

UNE Supplemental Remand Order at ¶5 [footnote omitted].

Moreover, the FCC stated that, "[b]ecause we intend that the constraint we identify in this Order to be limited in duration, we do not find it to be necessary for incumbent LECs and requesting carriers to undertake auditing processes to monitor whether or not requesting carriers are using unbundled network elements solely to provide exchange access service." UNE Supplemental Remand Order at fn. 9. Accordingly, the FCC allows requesting carriers to self-certify that they are providing a significant amount of local exchange service over combinations of unbundled loops and transport network elements. *Id.* Furthermore, the FCC stated that self-certification "will not delay" the ability of competitive LECs "to convert these facilities to unbundled network element pricing, and [the FCC] will take swift enforcement action if [the FCC] become[s] aware that any incumbent LEC is unreasonably delaying the ability of a requesting carrier to make such conversions." *Id.*

In making its self-certification, [CLEC] has been and continues to be fully aware of the constraint on uses of combinations of unbundled loop and transport network elements imposed by the FCC and is in and will continue to be in full compliance with the constraint and other FCC requirements in this regard. Thus, there is no reasonable basis for [ILEC] to delay the conversions of unbundled loops and transport network elements to unbundled network element pricing that have been or will be requested by [CLEC], and in the event of such delay, [CLEC] will immediately pursue such legal remedies as are available to it.

If you have any questions, please contact [NAME].

Respectfully,

[CLEC]